

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RAYMOND WIERZBIC,
BERNICE WIERZBIC,
BRIAN WIERZBIC,
ANGELENE WIERZBIC,

Plaintiff(s),

v.

Civil Action No. 13-CV-0978

ERIE COUNTY SHERIFF TIMOTHY HOWARD,
DEPUTY ERIE COUNTY SHERIFF MICHAEL HOOCK,
DEPUTY ERIE COUNTY SHERIFF JASON WEISS,
DEPUTY ERIE COUNTY SHERIFF THOMAS WAS,
DEPUTY ERIE COUNTY SHERIFF JAMES FLOWERS,

Defendant(s).

PROPOSED JUSTIFICATION CHARGE (REVISED)

A person who enters the property of another with justification cannot be liable for trespass. New York State Law provides that a law enforcement officer who seeks to serve legal process has the right to use necessary force to overcome resistance to the service of process or to place a party who is the subject of that process in possession of the document.

Taking into consideration all of the circumstances existing at the time and place of the alleged trespass, if you find that Hooch reasonably remained on the Plaintiffs' property in an attempt to ascertain the identities of the people on the property so as to properly effectuate service, then you will have found that Hooch was justified in his actions and you will find for the Defendants. If you find that it was not reasonable for Hooch to remain on the property to inquire as to the identity of the individuals, then he was not justified in his actions and you will find for

the Plaintiffs. In making your decision, you must take into consideration all of the circumstances confronting Hooch at the time and place of the incident.

Dated: November 2, 2018

/s/Jennifer C. Persico

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